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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 12, 2002

APPLICATION OF

DUKE ENERGY WYTHE, LLC

CASE NO. PUE010721

For permission to construct
and operate an electrical
generating facility

ORDER FOR NOTICE AND HEARING

On December 27, 2001, Duke Energy Wythe, LLC ("Duke Energy" or "Applicant"), filed an application requesting that the State Corporation Commission ("Commission") grant Applicant approval pursuant to the § 56-265.2 of the Code of Virginia ("Code"), for a certificate of public convenience and necessity to construct an electric generating plant and associated facilities at a site located in Wythe County, Virginia. The location is described in the public notice prescribed in ordering paragraph (6) of this Order. Pursuant to our Order in Case No. PUE010313, Code § 56-265.2 is no longer applicable to this application, by virtue of being supplanted by Code § 56-580 D. We will treat the application as if filed thereunder.¹

¹ Commonwealth of Virginia At the relation of the State Corporation Commission Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities, Case No. PUE010313, Document Control Center No. 010810174, slip op. (August 3, 2001).

Duke Energy proposes to build a 620 MW natural gas-fired combined cycle electric generating plant ("Facility") to commence commercial operation by the end of the second quarter of 2004. An interconnection, consisting of a tap and a lateral pipe from the tap to the meter station, will be constructed on the Facility site to supply natural gas from the pipeline² to the Facility.

The Facility is approximately one-half mile from the American Electric Power, Inc. ("AEP"), 765 kV Jacksons Ferry Substation to which the Facility will be connected. The Facility site adjoins the AEP substation site. Interconnection facilities will be built to connect the Facility to AEP's transmission system.

Water for the Facility will be obtained from the Austinville Mine. A twenty-inch pipeline will be constructed from that mine to the Facility site.

In support of its request, Applicant states that it anticipates that all of the electricity generated by the Facility will be sold on a wholesale basis to DENA affiliates and that Applicant will not provide retail electric service to customers in Virginia. Applicant further explains that no

² The natural gas pipeline (Patriot Extension) proposed to be constructed by East Tennessee Natural Gas, an affiliate of Duke Energy North America, LLC ("DENA"), which is the subject of Case No. CP01-415 now pending before the Federal Energy Regulatory Commission ("FERC"), will transverse the Facility site and supply natural gas to the Facility.

utility with rates regulated under Chapter 10 has a financial ownership interest in Duke Energy.

Finally, Duke Energy requests that the Commission grant it interim authority to make financial expenditures and begin preliminary construction activities at its expense and risk in advance of final approval of this application pursuant to § 56-234.3 of the Code. This provision, too, is no longer applicable to this application. Code § 56-580 D, the replacement statute, provides that the Commission "may permit the construction and operation of electrical generation facilities" if the showings required in the statute are made. We find that construction of permanent facilities may not be undertaken absent our approval, but that the Applicant may, at its risk, undertake other preliminary site preparation and construction activities.

Applicant states that the Facility will have no adverse effect upon the rates paid by customers of any regulated public utility in Virginia or upon the reliability of service provided by such utilities. The Applicant states that the Facility will promote the public interest by providing economic benefits to Wythe County and the surrounding area through the increased tax base and employment opportunities the \$250 million Facility will offer. Applicant notes that the Facility will enhance the competitive market for wholesale electricity and provide additional electric generating capacity in Virginia. Duke

Energy represents that the Facility will be constructed and operated to minimize any adverse environmental impact.

NOW THE COMMISSION, having considered the application, is of the opinion and finds that the matter should be docketed, notice of the application should be given to the public, interested persons should have an opportunity to comment or to participate in this matter, the Commission Staff should investigate Duke Energy's proposal and present its findings to the Commission, and a hearing should be scheduled.

Accordingly, IT IS ORDERED THAT:

(1) Duke Energy's application for a certificate of public convenience and necessity is docketed and assigned Case No. PUE010721.

(2) Pursuant to 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure ("Rules"), a Hearing Examiner is appointed to conduct all further proceedings in this matter.

(3) A public hearing for the purpose of receiving evidence relevant to the application is scheduled for June 25, 2002, at 10:00 a.m. in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia.

(4) Duke Energy shall promptly make a copy of its application and other materials available to the public who may obtain copies, at no charge, by making a request in writing from counsel for the Applicant, Guy T. Tripp III, Esquire, and

John M. Holloway III, Esquire, Hunton & Williams, Riverfront Plaza - East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. The application and other materials filed in this docket may also be reviewed during regular business hours at the Commission's Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, and at the Wythe County Public Library, 300 East Monroe Street, Wytheville, Virginia.

(5) On or before March 15, 2002, the Applicant shall serve a copy of its application and this Order, by personal delivery or by first class-mail, postage prepaid, to: The Board of Supervisors of Wythe County, Virginia; The Honorable W. Tayloe Murphy, Jr., Secretary of Natural Resources, P.O. Box 1475, Richmond, Virginia 23218; Robert G. Burnley, Director, Department of Environmental Quality, P.O. Box 1009, Richmond, Virginia 23240-0009; and to each investor-owned and cooperative electric utility in the Commonwealth as listed in Appendix A to this Order.

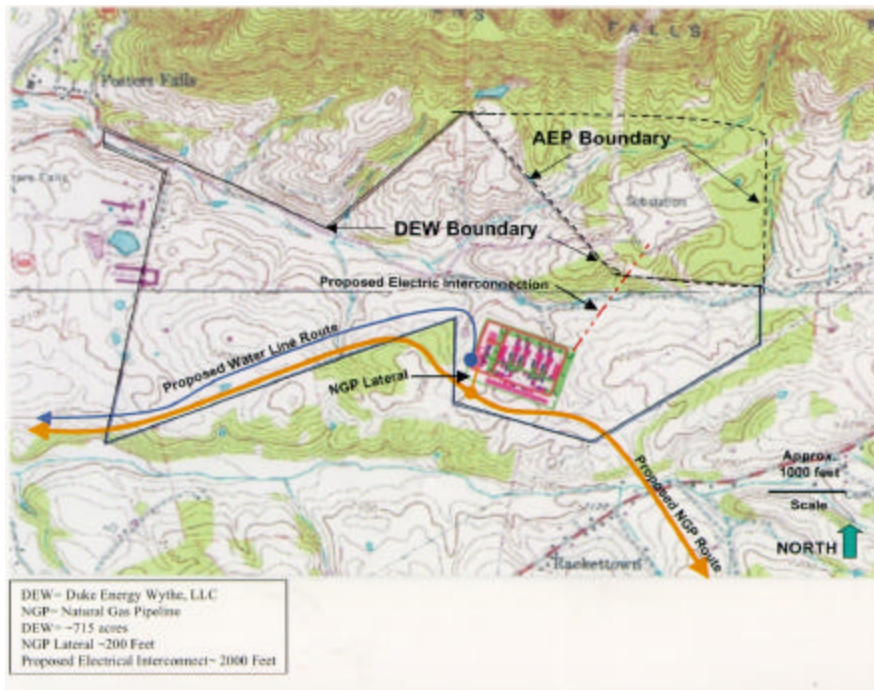
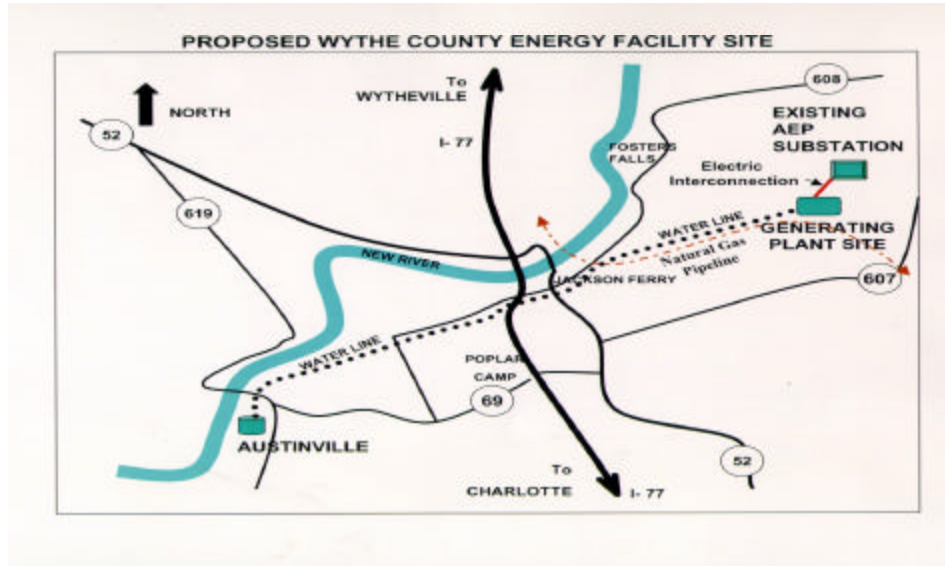
(6) On or before March 8, 2002, the Applicant shall cause the following notice and sketch map to be published as display advertising (not classified) in newspapers having general circulation in Wythe County, Virginia:

NOTICE OF AN APPLICATION OF
DUKE ENERGY WYTHE, LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT AN ELECTRIC
GENERATION FACILITY IN WYTHE COUNTY, VIRGINIA,
CASE NO. PUE010721

On December 27, 2001, Duke Energy Wythe, LLC ("Duke Energy" or "Applicant") filed an application requesting that the State Corporation Commission ("Commission") grant the Applicant a certificate of public convenience and necessity pursuant to § 56-265.2 of the Code of Virginia ("Code") to construct an electric generating plant and associated facilities at a site located in Wythe County, Virginia. That provision of the Code has been supplanted, effective January 1, 2002, by Code § 56-580 D, and the case will proceed pursuant to this statute. A description of the location follows:

The Duke Energy Wythe Facility is located in a rural area approximately three-quarters of a mile southeast of the New River and southeast of the community of Foster Falls in Wythe County, Virginia, and adjacent to the American Electric Power ("AEP") Jacksons Ferry substation.

The following are maps showing the approximate location:



Duke Energy proposes to build a 620 MW natural gas-fired combined cycle electric generating plant ("Facility") to commence commercial operation by the end of the second quarter of 2004. An interconnection, consisting of a tap and a lateral pipe from the tap to the meter station, will be

constructed on the Facility site to supply natural gas from the pipeline to the Facility. The natural gas pipeline (Patriot Extension) proposed to be constructed by East Tennessee Natural Gas, an affiliate of Duke Energy North America, LLC, which is the subject of Case No. CP01-415 now pending before the federal Energy Regulatory Commission ("FERC"), will transverse the Facility site and supply natural gas to the Facility.

The Facility is approximately one-half mile from the AEP 765 kV Jacksons Ferry Substation to which the Facility will be connected. The Facility site adjoins the AEP substation site. Interconnection facilities will be built to connect the Facility to AEP's transmission system.

Water for the Facility will be obtained from the Austinville Mine. A twenty-inch pipeline will be constructed from that mine to the Facility site.

Finally, Duke Energy requests that the Commission grant it interim authority to make financial expenditures and begin preliminary construction activities at its expense and risk in advance of final approval of this application pursuant to § 56-234.3 of the Code. In support of this relief, Applicant states that such authority will facilitate contractual commitments for equipment and preliminary engineering and construction work. This Code provision also no longer applies. The Applicant may proceed, however, at its risk, with site preparation and preliminary construction activities but may not commence construction on any permanent facility until construction of the Facility is approved by the Commission.

Applicant states that the Facility will have no adverse effect upon the rates paid by customers of any regulated public utility

in Virginia or upon the reliability of service provided by such utilities. The Applicant states that the Facility will promote the public interest by providing economic benefits to Wythe County and the surrounding area through the increase in tax base and employment opportunities the \$250 million Facility will offer. With respect to promoting the public interest, Applicant notes that the Facility will provide economic benefits to Wythe County and the surrounding area, enhance the competitive market for wholesale electricity, and provide additional electric generating capacity in Virginia. Duke Energy represents that the Facility will be constructed and operated to minimize any adverse environmental impact.

A copy of the application and other materials may be obtained, at no charge, by making a request in writing to counsel for the Applicant, Guy T. Tripp III, Esquire, and John M. Holloway III, Esquire Hunton & Williams, Riverfront Plaza - East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074. The application and other materials filed in this docket may also be reviewed during regular business hours at the Commission's Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, and the Wythe County Public Library, 300 East Monroe Street, Wytheville, Virginia.

A public hearing for the purpose of receiving evidence relevant to the application is scheduled for June 25, 2002, at 10:00 a.m. in the Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled

hearing date at 1-800-552-7945 (voice) or 1-8-371-9206 (TDD).

On or before April 12, 2002, any person or entity desiring to comment in writing on Duke Energy's application for a certificate of public convenience and necessity may do so by directing such comment to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any person or entity desiring to make a statement at the public hearing concerning the application need only appear in the Commission's second floor courtroom in the Tyler Building at the address set forth above.

On or before April 12, 2002, any person or entity desiring to participate in this proceeding as a respondent as provided by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure shall file an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth above and shall be a party to the proceeding. All notices of participation shall contain: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent now known; and (iii) the factual and legal basis for the action.

On or before April 26, 2002, any respondent shall file an original and fifteen (15) copies of the prepared testimony and exhibits the respondent intends to present at the hearing with the Clerk of the Commission at the address set forth above.

All comments, notices of participation, and prepared testimony and exhibits shall refer to Case No. PUE010721. Copies of the same shall be, in addition to being filed with the Clerk of the Commission,

simultaneously served on counsel for Duke Energy at the address set forth above.

A copy of the Commission's Order establishing the proceedings, outlining details for participation, and setting forth the complete procedural schedule is available from the Commission's web site, <http://www.state.va.us/scc/caseinfo/orders.htm>.

DUKE ENERGY WYTHE, LLC

(7) On or before April 12, 2002, any person or entity desiring to comment in writing on Duke Energy's application for a certificate of public convenience and necessity shall file such comments with the Clerk of the Commission at the address set forth in Ordering Paragraph (7) above. A copy of the same shall simultaneously be served on counsel for Duke Energy at the address set forth in Ordering Paragraph (4) above. All comments shall refer to Case No. PUE010721. Any person desiring to make a statement at the public hearing concerning the application need only appear in the Commission's second floor courtroom in the Tyler Building at the address set forth in Ordering Paragraph (3) above.

(8) On or before April 12, 2002, any person or entity desiring to participate in this proceeding as a respondent as provided by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure shall file an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth in Ordering Paragraph (7)

above and shall be a party to the proceeding. All notices of participation shall refer to Case No. PUE010721 and shall contain: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Copies of the same shall be simultaneously served on counsel for Duke Energy at the address set forth in Ordering Paragraph (4) above.

(9) On or before April 26, 2002, any respondent shall file an original and fifteen (15) copies of the prepared testimony and exhibits the respondent intends to present at the hearing with the Clerk of the Commission at the address set forth above. All prepared testimony and exhibits shall refer to Case No. PUE010721. Copies of the same shall be simultaneously served on counsel for Staff and all parties.

(10) The Commission's Staff shall analyze Duke Energy's application and, on or before June 11, 2002, file with the Clerk of the Commission an original and fifteen (15) copies of the prepared testimony and exhibits the Staff intends to present at the public hearing and serve a copy on all parties.

(11) On or before June 18, 2002, Applicant shall file with the Clerk of the Commission an original and fifteen (15) copies of any testimony its expects to introduce in rebuttal to any direct prefiled testimony of the Commission Staff and

respondents. Applicant also shall hand-deliver or electronically deliver a copy of such rebuttal testimony to the Commission Staff and respondents.

(12) At the commencement of the hearing scheduled herein, Applicant shall provide to the Commission proof of the notice and service required by Ordering Paragraphs (5) and (6) herein.

(13) The Applicant and respondents shall respond to written interrogatories or data requests within ten (10) days after the receipt of such requests. Except as so modified hearing, discovery and hearing preparation procedures shall be in accordance with Part IV of the Rules.